REMARKS

This Response is filed in reply to the Official Action dated February 5, 2008. Applicants respectfully submit that the Response is fully responsive to the Official Action for at least the reasons set forth herein.

Claims 1-15 are pending.

At the onset, Applicants note that the statement of the rejection in ¶ 5 appears to be incorrect. The Examiner indicates that claims 11 and 12 have allowable subject matter in ¶ 8 and the summary; however, claims 11 and 12 are included in the statement of the rejection. Applicants assume that claims 11 and 12 are not rejected.

35 U.S.C. § 101

In the Official Action, claim 15 stands rejected under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter. The Examiner avers that the "disclosure would suggest to one of ordinary skill in the art that all limitations as claimed may be reasonably implemented as software routines." The claim is rejected as a system of software "*per se*".

Applicants respectfully disagree and traverse with at least the following analysis. Notably, the Examiner appears to be improperly reading in limitations into the claim from the specification. *See E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). Claim 15 is directed to a network routing **system** for determining a route through a network of interconnected links. Applicants submit that claim 15 is directed to a new and useful *machine*, i.e., a system.

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Even if the claimed system could be implemented as a software routine as suggested by the Examiner, the claim subject matter is **not** *per se* non-statutory. The claim includes hardware structure that executes the method. Specifically, the claim recites, *inter alia*, the programmed element. The claim is not directed to a software routine, but rather a tangible structure that includes the programmed element.

Additionally, the claimed system has utility. The claim includes functional limitations which produce a useful, concrete and tangible result, i.e., determining a route. In fact, a route is selected from among the one or more determined possible routes.

35 U.S.C. § 102

In the Official Action, claims 1, 2, 5-8 and 10-15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Johnson, U.S. Patent No. 6,078,946.

Applicants respectfully disagree with the rejection and traverse with at least the following analysis. Johnson fails to teach or suggest each limitation of the rejected claims.

Independent claim 1 recites a method for dynamically determining costs for links of a network, *inter alia*, prioritizing the selected allowable values and for any given link in the network: determining for each selected routing factor which selected allowable value, if any, matches the characteristics of the link. Applicants respectfully submit that Johnson fails to teach these features.

At best, Johnson teaches prioritizing the selected routing factors. Specifically, Johnson describes that the weighting of the different attributes, e.g., routing factors, are determined by customer's priorities. However, Johnson does not teach the same prioritization for the allowable values. Notably, Johnson teaches assigning specific neural attribute values for the attributes,

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e.g., assigning specific allowable values. Johnson states that the physical attributes are converted by an arbitrary scale to provide a numerical value which can be identified as neural attributes. The neural values are not "prioritized". The scaling, i.e., the higher number indicating a greater desirability and lower number initiating a lower desirability of the allowable value, is not prioritizing the allowable values in terms of a ranking or importance, as claimed. In contrast, in the claimed invention the allowable values are ranked or prioritized in order of importance. For example, the instant specification states that in step 108, **the user prioritizes the selected preference values for each routing selection factor** (Table 2, column 5) and based on these priorities, assigns each preference value a "preference factor cost," with the highest priority preference value receiving the lowest cost, etc. ¶ 0023.

At best, Johnson suggests that the neural attributes may be modified by attaching weights. However, Johnson fails to teach that the weights are assigned based upon a customer's priority or ranking of the allowable values.

Additionally, Johnson fails to teach that once the parameters and weighting factors have be selected or determined, a determination is made for each selected routing factor which selected allowable value, if any, matches the characteristics of the link (this feature is similarly, recited in independent claim 10). Notably, the claimed invention compares each link to the selected factors and determined which preference values match the characteristics of the link, e.g., step 110a.

Therefore, Applicants submit that independent claims 1 and 10 are patentable over the cited reference.

Independent claims 6 and 15 recite a method for determining a route and a route determining system, respectively, comprising or including, *inter alia*, a step of traversing a

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plurality of links through the network to determine one or more possible routes **wherein a given link is only traversed if each of the selected routing factors applies to the link and if at least one of the selected allowable values for each factor applies to the link** (Emphasis Added).

Johnson fails to teach the claimed step. Specifically, Johnson fails to teach the claimed elimination process. In the Official Action, the Examiner identifies sections of the reference which purportedly teach the claim limitation. Applicants respectfully submit that the identified sections fail to teach the limitation. At best, Figures 7-9 teaches traversing the plurality of links individually (in segments) between the locations. Figures 7-9 designate the best routes using dashed lines, whereas, other links are designated with solid lines. However, each link is always compared with the threshold. No link is eliminated before the comparison. In stark contrast, in the claimed invention links are eliminated. For example, in the instant specification a link cost is not calculated for a given link unless the designated cost routing algorithm considers the link a possible route. "If at least one of the "X" selected "routing selection factors" does not apply to a link or if none of the "preference values" for a given factor apply to a link, no cost is calculated for that link and the link (and routes emanating from that link) is disregarded in the routing algorithm (step 314). (For example, in network 200, the routing system would disregard link 230 (and routes including this link) because "pending disconnect" is not a preference value specified by the user.) However, for each link that meets both criteria, the network routing system determines a cost for the link (step 316)." ¶ 0032.

Additionally, independent claim 6 and 15 is patentable over Johnson at least based upon the analysis set forth above, with respect to claims 1 and 10. Johnson fails to teach determining for each selected routing factor which **selected allowable values matches** the characteristic of the traverse links. Johnson fails to teach "matching."

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Accordingly, all of the independent claims are patentable over Johnson; Johnson fails to teach or suggest each and every limitation of the claims.

Claims 2, 5, 7, 8, 13 and 14 are patentable over Johnson based at least upon the above-identified analysis and their dependency, whether directly or indirectly, from claims 1, 6 and 10, respectively.

Applicants further submit that claims 5, 8 and 14 are separately patentable over Johnson.

Specifically, claim 5 recites that, *inter alia*, said determining, combining, and summing steps **are only performed if it is** first determined that each of the selected routing factors apply to the given link and if at least one of the selected allowable values for each factor applies to the given link. Johnson fails to teach the claimed conditional relationship, i.e., "only performed if" (Emphasis Added). As noted above, in the claimed invention a link cost is not calculated for a given link unless the designated cost routing algorithm considers the link in a possible route. If at least one of the "X" selected "routing selection factors" does not apply to a link or if none of the "preference values" for a given factor apply to a link, no cost is calculated for that link and the link (and routes emanating from that link) is disregarded in the routing algorithm (step 314). However, in Johnson, the link cost is always calculated.

Furthermore, claims 8 and 18 recites, *inter alia*, that the costs assigned to the selected allowable values for each selected routing factor are **based on a prioritization of the allowable values** (Emphasis Added). As noted above, Johnson fails to teach the prioritization of the allowable values. Therefore, Johnson cannot teach, using the prioritization to assign a cost.

Accordingly, claims 5, 8, and 14 are separately patentable over Johnson.

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Appln Serial No. 10/665,033
Amdt Dated August 5, 2008
Reply to Office Action Dated February 5, 2008

35 U.S.C. § 103

In the Official Action, claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of Odiaka, U.S. Patent No. 6,829,347.

Applicants respectfully disagree with the rejection and traverse with at least the following analysis.

Applicants submit that Odiaka fails to cure any of the above-identified deficiencies. Therefore, the cited hypothetical combination, whether taken alone or in any combination thereof, fails to teach or suggest each and every limitation of the claim.
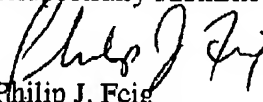
Conclusion

Based upon the foregoing, Applicants respectfully request that the Examiner withdraw the rejection of claim 15 pursuant to 35 U.S.C. § 101. Additionally, Applicants respectfully request that the Examiner withdraw the rejections of claims 1, 2, 5-10, and 13-15 pursuant to 35 U.S.C. §§ 102/103.

For at least the reasons set forth in the foregoing discussion, Applicants believe that the Application is now allowable, and respectfully requests that the Examiner allow the Application.

Authorization is hereby given to charge Deposit Account No. 02-1822 the fee due under 37 CFR 1.17(a) of $1050.00 for a three month extension of the time to reply to the Office Action.

Respectfully submitted,

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